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In the Supreme Court of the United States

October Term, 1975
No. 74-942

FRANK L. RIZZO, et al.,
Petitioners,

v.

GERALD G. GOODE, et al.,
Respondents

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,
Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA AMICUS CURIAE

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Pursuant to Rule 42(4) of the Rules of the Supreme Court of the United States, the Commonwealth of Pennsylvania respectfully submits this brief as an *amicus curiae*.

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STATEMENT OF INTEREST

The Commonwealth of Pennsylvania (hereinafter Commonwealth) maintains a strong interest in the development of effective law enforcement to protect the personal and property rights of its citizens, while at the same time alleviating the causes and effects of community unrest and the resulting alienation of minority people. The Commonwealth is, therefore, interested in this matter because of a concern for its citizens, particularly in urban areas, in terms of both the adequacy of police protection and the unequal application of police force in many communities.

The Commonwealth, through the Attorney General, has a responsibility under the law to "take such steps, and adopt such means, as may be reasonably necessary to enforce the laws of the Commonwealth." 71 P.S. §294(b) (1962). The Attorney General's office has investigated many instances of inappropriate police conduct by officers of the Philadelphia Police Department. In analyzing the means toward correcting patterns of illegal behavior and activity, the Attorney General has concluded that lawful and just disciplinary procedures are a necessary prerequisite to good law enforcement. In fact, the Commonwealth believes that where there is adequate communication and accountability between police and the communities and where disciplinary procedures are responsive to instances of injustice and unrest, the police can more effectively and efficiently provide law enforcement services.

The present case challenging the Philadelphia Police Department's procedure, or lack of procedure, for handling civilian complaints of police misconduct is vital to all citizens of Pennsylvania. The District Court's final judgment provided measures to enable citizens to redress their grievances more easily. The judgment would also facilitate the handling of these complaints since the Police Department would have guidelines requiring a fair and speedy resolution of a complaint. Without the procedures set forth in the final judgment, relations between the police and the community will continue to deteriorate from a lack of cooperation and confidence to the detriment of the Commonwealth and its citizens.

The District Court's remedy is endorsed by the Commonwealth since it provides a lawful, effective mechanism to investigate inappropriate governmental action and correct existing abuses that frequently have contributed to civil disturbance and violation of laws.

COUNTER-STATEMENT OF THE CASE

The Commonwealth of Pennsylvania, *Amicus Curiae*, adopts the Respondents' counter-statement of the case.

ARGUMENT

I. Citizen Charges of Misconduct by Officers of the Philadelphia Police Department Continue to Exist and Evidence Indicates That the Number of Complaints Is Increasing

Complaints about police misconduct in Philadelphia are not new. In the last ten years, however, the number of allegations of police abuse has increased alarmingly. What was once a problem circumscribed to certain areas, namely those populated by minorities, has now spread out into virtually all parts of the city so that no longer is anyone immune from the effects of police harassment.[1]

Because of this growing number of citizen complaints, the Attorney General of Pennsylvania established a special unit in November, 1970 to review complaints of police misconduct in Philadelphia. Complaints received by that office include charges of unlawful use of deadly force, unlawful beatings of people, false charges placed against citizens even though no illegal act was committed, discriminatory enforcement of the law, and continuous harassment. Beginning January, 1974, in an attempt to document and detail the size and range of the problem, the Department of Justice began compiling statistics on police misconduct from its own office and from seven groups in the city. The data compiled for three successive six month periods indicates not only that the number of citizen complaints is substantial, but also that it is continuing to grow.

[1] Pollack, *Police Abuse: How It Is Ignored*, Philadelphia Inquirer, February 16, 1975, at 1-A, col. 1. This was the first of a three part series on police abuse in Philadelphia that resulted from an exhaustive seven month investigation conducted by the Philadelphia Inquirer. The subsequent parts of the series appeared February 17 and 18, 1975.

Moreover, even in the space of this relatively short year and a half period, complaints have increased sharply. During the period of January 1, 1974 through June 30, 1974, 71 complaints of police abuse were recorded. This number increased to 156 during the period of July 1, 1974 through December 31, 1974. The rise in complaints continued during the period of January 1, 1975 to June 30, 1975 when the number rose to 199. If this trend persists, twice as many complaints will be filed in 1975 as in 1974.

Following is a breakdown of police misconduct complaints by type of complaint for the three successive six month periods.[2]

[2] Data collected by the Community Advocate Unit of the Pennsylvania Department of Justice and from seven agencies and community groups handling police complaints.

Charges of Police Abuse Against Philadelphia Police Officers

Time Period	1/1/74-6/30/74	7/1/75-12/31/75	1/1/75-6/30/75	Total
Incidents[3]	71	156	199	426
Complaints Against Police				
Abuse of Force[4]	60	124	121	305
Major Injury[5]	22	20	28	70
Medium Injury	20	52	34	106
Minor Injury	14	47	48	109
Property Taken or Destroyed	9	15	28	52
Illegal Search or Arrest	19	68	74	161
Other	8	36	42	86

Examining the data further indicates that a charge of police abuse was lodged by a citizen at the rate of one every 38 hours in 1974 and rose to one every 27 hours in 1975. However, the actual rate of complaints appears to be much higher. Police Commissioner Joseph O'Neill stated that the statistics were inaccurate "because police received a total of 902 complaints during the year." Philadelphia Inquirer, January 29, 1975 at 1-B, col. 3. It is important to note that by the Police Commissioner's own statement this would indicate that the police are actually receiving complaints at the rate of two to three a day.

[3] Each incident may include more than one complaint of police misconduct.

[4] In twenty cases throughout the 18 month period no indication of the type of injury was designated.

[5] Major injury required hospital treatment. Medium injury required out-patient doctor treatment. Minor injury required no medical attention.

Further evidence of an increase in the number of citizen complaints can be found in the *Philadelphia Inquirer* investigative series on police abuse. The series of articles made the following findings:

> "There is no disputing that the number of complaints of police abuse and brutality in Philadelphia continues to rise, year after year." Philadelphia Inquirer, Feb. 16, 1975, at 1-A, col. 5.
>
> "Police abuse of citizens, once restricted to lower-class black neighborhoods, has spread through the city; complaints of police brutality are now lodged regularly against officers in virtually every police district." *Id.*, at col. 3.

II. All Present Remedies Available to Citizens of Philadelphia Who Have Grievances Against the Police Continue To Be Inadequate

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In the District Court opinion,[6] Judge Fullam found that:

> "Existing procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints is totally in-

[6] *Council of Organizations on Philadelphia Police Accountability and Responsibility (COPPAR) et al. v. Frank L. Rizzo, et al.*, 357 F. Supp. 1289 (E.D. Pa. 1973).

adequate," 357 F. Supp. at 1318, ". . . that little or nothing is done by the city authorities to punish such infractions," *Id.* at 1319 and that ". . . except in cases of severe injuries, existing remedies are inadequate to protect the public interest involved." *Id.* at 1319.

Since Judge Fullam's opinion was issued on March 14, 1973, there has been virtually no progress in expanding legal remedies for police abuse. This is true not only with regard to remedies within the Police Department, but in the District Attorney's office and with private civil damage suits as well.

A. Disciplinary procedures within the Philadelphia Police Department for handling complaints of police misconduct continue to be totally inadequate.

A police department that has in the last ten years grown in size and strength has also moved to be increasingly isolated from the people it serves. The well known "cop on the beat" is now seen through the insulation of a cruising patrol car. In their day-to-day work police are constantly on the front line; viewing themselves as vulnerable, many times they react to attacks, genuine or imaginary, with force. But without internal checks and balances in the department or the development of public accountability procedures, police have not had to contend with limits or constraints upon their power.

In May, 1974, the Citizens' Crime Commission of Philadelphia (hereinafter "Commission") issued a report entitled *Police Internal Affairs: An Analysis of Policies, Procedures and Guidelines of Internal Discipline, Philadelphia Police Department.*[7] The report studied various aspects of the internal disciplinary procedure of the Philadelphia Police Department and compared them with the National Advisory Commission on Criminal Justice Standards and Goals report, entitled *Report on Police.*[8] This Commission report, issued more than one year after Judge Fullam's opinion, showed that even after the issuance of the opinion the Philadelphia Police Department had still undertaken no effort to improve its grievance procedure.

The problems studied and the recommendations of both the National Advisory Commission and the Commission are almost identical to the finding of Judge Fullam and the relief granted in his final judgment. The Commission found inadequate procedures regarding the present complaint form, information on how to file a complaint, notification to the complainant of

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[7] Hereinafter Commission Report ("Com. Rep."). The Commission is a nonpartisan organization concerned with the reduction of crime and crime prevention. It is a community-based organization, of approximately 300 members primarily composed of business people and attorneys.

[8] National Advisory Commission on Criminal Justice Standards and Goals Task Force Report, Report on Police (Government Printing Office, No. Y3.C86:2P75 1973). The National Advisory Commission on Criminal Justice Standards and Goals, hereinafter "National Advisory Commission," is a Presidentially created advisory committee that is mandated to set standards that would enable a police department to establish and maintain an efficient, responsive system of discipline, while recognizing that discipline and accountability are essential if a police department is to engender public confidence, maintain effective performance and preserve employee morale.

final disposition, and in statistical record keeping of citizen complaints. A summary of the relevant findings and recommendations of the Commission's report includes the following:

Complaint Verification—The Commission recognized that present complaint forms are inadequate and went on to say that the "[p]olice must make every effort to convince the public that they are truly receptive to complaints. A lack of citizen participation will be contrary to the best interest of a police agency since instances of employee inefficiency and misconduct will not be revealed." Com. Rep. at 26. It recommended that the police department produce new prenumbered written complaint forms, to be filled out for each complaint and signed by the person receiving the complaint. Com. Rep. at 26. This recommendation is almost identical to Judge Fullam's Final Judgment on complaint forms and their distribution (App. Cert. Pet. 21a, 22a).[9]

Public Information on Complaint Procedure—The Commission found that various police departments have initiated public information programs through the distribution of printed material describing the policies and procedures used for internal discipline. However, the report, found that "[i]n Philadelphia there is no such information program with regard to the issuance or the making of a formal complaint regarding police misconduct." Com. Rep. at 27.

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[9] *Goode v. Rizzo*, Civil No. 70-491 (E.D. Pa., Oct 5, 1973). Page references to the District Court's unreported Final Judgment are to the Appendix to the Petition for Writ of Certiorari and are designated ("App. Cert. Pet.") and appropriate page number.

The Commission therefore recommended that the "Police Department produce and distribute to the public a pamphlet that spells out procedures that should be followed for filing complaints against the police and how such complaints are processed." Com. Rep. at 27. This procedure directly corresponds to the wide circulation of the intradepartmental directive covering receipt, investigation and disposition of civilian complaints of police misconduct required by the District Court in the Final Judgment (App. Cert. Pet. 21a, 22a).

Notification of Complaint Disposition—The Commission found that the Police Department only notifies the complainant orally of its final action. Therefore, the Commission recommended that "notification of the disposition of a civilian complaint against the police should be given in writing." Com. Rep. at 27. Judge Fullam's final order also required notice of disposition of the complaint be given to the complainant in writing (App. Cert. Pet. 31a, 34a, 36a).

Complaint Record Keeping and Disclosures of Statistics—The Commission found that the Philadelphia Police Department does not regularly release statistics regarding internal disciplinary action. It, therefore, recommended compilation of statistics indicating the disposition of complaints, both civilian and from within the department. The recommendation suggested that these statistics "should be made available for proper purposes to the public and other law enforcement agencies at regular intervals." Com. Rep. at 29. Judge Fullam also required that the Police Department maintain adequate statistical records, and annual summaries to provide an adequate basis for evaluation of

the program for handling civilian complaints (App. Cert. Pet. 36a, 37a).

Upon reviewing the findings and recommendations of the Commission Report, it becomes evident that the same problems in citizen complaint procedures were found to exist in May, 1974 by the Commission that had existed in March, 1973 when Judge Fullam issued his opinion. Indeed, the Commission recommended similar changes as those ordered by the District Court.

In its conclusion, the Commission Report stressed the many positive effects that would result from adoption of its recommendations by the Commissioner of Police:

> "The Crime Commission believes that if the recommendations contained in this report are implemented, a major step will have been taken in moving against the corruption that unfortunately pervades to a greater or lesser degree all large city police departments." Com. Rep. at 51.

However, to this date, the Police Department has failed to implement any of the recommendations advanced by the Commission.

Further evidence of the inadequacy of the internal Police Department complaint procedure was found in the *Philadelphia Inquirer* investigation into police misconduct:

> ". . . Philadelphia policemen who abuse their authority are rarely disciplined for their misdeeds." Philadelphia Inquirer, Feb. 16, 1975, at 1-A, col. 2-3.

> "Independent witnesses to police abuse are treated rudely and are generally discouraged in their efforts to help discipline policemen." *Id.* Feb. 17, 1975, at 1-A, col. 3.
>
> "Fewer than one out of every 10 officially requested complaints of police misconduct ever reach the department's disciplinary body, the Police Board of Inquiry." *Id.* Feb. 16, 1975, at 1-A, col. 5.

It is clear from both the Citizens' Crime Commission Report and the result of investigations conducted by the *Philadelphia Inquirer* that the present internal procedures for handling civilian complaints of police misconduct are completely insufficient to curb abuse.

B. Filing of complaints with the District Attorney's office has resulted in very few indictments of police officers and continues to be an unsatisfactory remedy.

In his opinion, Judge Fullam concluded that: "Except in extreme cases, criminal prosecutions are unlikely; and in any event, given the dual role of the District Attorney's staff, such prosecutions are a most unsatisfactory vehicle for vindication of the rights involved." 357 F. Supp. at 1319, 1320.

He based this conclusion on findings that: (1) In cases where a citizen complaint was filed with the District Attorney's office,[10] that office may already be

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[10] Rule 133 of the Pennsylvania Rules of Criminal Procedure requires that private criminal complaints be filed with the District Attorney.

prosecuting the complainant on charges arising from the same incident, therefore, causing a conflict, *Id.* at 1294; (2) Prosecutions were not found to occur unless serious injuries were sustained, *Id.*; (3) Citizen complaints were dropped in exchange for the dropping of criminal charges against the complainant, *Id.*; and (4) The District Attorney's office did not ordinarily communicate to the complainant its decision not to prosecute the police officer. *Id.*

The same conditions mitigating against criminal prosecution of police officers by the District Attorney's office continue to exist at the present time. From September 1, 1974 through June 26, 1975, 83 citizen complaints of police misconduct were received and investigated by the District Attorney's office. Yet, in only three cases were policemen indicted.[11] This statistic alone would seem to indicate that the filing of criminal charges with the District Attorney has not been an effective remedy.

The data collected by the Attorney General's office[12] in 1974 and the first half of 1975, indicated that in over 66 percent of the complaints (282), criminal charges were filed by police against the complainant. The overwhelming number of these, 68 percent of the complaints (191), involved charges of assault and battery on a policeman, disorderly conduct, resisting arrest or other such charges which arose out of the

[11] Information released in January, 1975, by John Morris, Assistant District Attorney, Chief of Investigations, Philadelphia, and in July, 1975, by Esther Sylvester, Assistant District Attorney, Chief of Investigations, Philadelphia.

[12] See note 2, supra.

same incident.[13] Therefore, the District Attorney is continually placed in the difficult position of prosecuting the complainant on the one hand, and being asked to prosecute the police officer on the other.

This problem has led to situations in which neither case ever gets to the trial stage because of pressure on the complainant from the police, the judges and the District Attorney to agree to the dropping of the criminal charges against the complainant in exchange for an agreement that he will not press criminal or civil prosecutions against the police officer. This practice was confirmed in the *Philadelphia Inquirer* investigation in which three cases were cited where the Assistant District Attorney offered such deals. Philadel-

[13] The full statistical breakdown of criminal charges filed against complainants and the number of complainants not charged is as follows:

	1/1/74-6/30/74	7/1/74-12/31/74	1/1/75-6/30/75	Total
Criminal charges against complainant•	52	96	134	282
Assault & Battery on Police Officer	32	53	55	140
Disorderly Conduct	22	39	27	88
Resisting Arrest	20	47	33	100
Terroristic Threats	2	0	0	2
Other	15	37	49	91
No Criminal Charges against complainant	19	60	65	144
Total	71	156	199	426

• *Note*: Multiple charges are often filed against each complainant.

phia Inquirer, Feb. 16, 1975, at 6-A, col. 6. The *Inquirer* concluded that:

> "Some judges and assistant district attorneys protect policemen from civil suits or criminal charges by telling civilian defendants that charges against them will be dropped or sentences lightened if the civilians agree in turn to drop complaints against the police . . . ." *Id.*, at 1-A, col. 4.

Frequently, defense attorneys are quick to advise their clients to accept such deals rather than risking a guilty verdict and possible criminal sentence. However, the ultimate effect is to allow police misconduct to go unchecked and to emasculate the remedy of a private criminal complaint.

C. Private civil suits for damages continue to be an inadequate remedy to redress grievances of police misconduct.

Judge Fullam said in his opinion that "Private suits for damages are expensive, time-consuming, not readily available, and not notably successful; moreover, they have no preventive effect." 357 F. Supp. at 1319. Because the costs of litigation are very high and the chances of recovery are improbable, few attorneys are willing to take police brutality cases on a contingent fee basis. The Lawyers Reference Service in Philadelphia has been unable to obtain attorneys to handle these cases.[14] At the present time, the Philadelphia

[14] Statement of Isadore Winderman, Esquire, Director of the Lawyer's Reference Service of Philadelphia at a meeting of the Governor's Regional Planning Commission on Thursday, April 17, 1975.

Bar Association has established a special volunteer panel of attorneys to represent clients who allege police misconduct. However, the panel consists of fewer than twenty-five attorneys, an insufficient number to handle the large volume of cases.[15] Therefore, attorneys have only been secured for cases involving the most serious instances of police abuse.

Furthermore, as noted by the District Court, the civil damage suit has not been an adequate remedy because lawsuits are defended by the City of Philadelphia rather than by the individual police officer involved. The individual police officer is insulated from the procedure by the City and is not held directly accountable for his behavior. Thus, even if a monetary payment is awarded to the complainant, the civil damage suit has almost no deterrent effect.

III. The Relief Granted by the District Court Is Appropriate and Necessary To Remedy the Continuing Problem of Police Misconduct in the City of Philadelphia

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In our society, the ultimate responsibility for effectively curbing abuses of "legal" authority must rest solely upon the judicial process. In *Lankford v. Gels-*

[15] Statement of Bruce Thall, Esquire, staff attorney with the Philadelphia Bar Association's sponsored Public Interest Law Center of Philadelphia at a meeting of the Governor's Regional Planning Commission on Thursday, April 17, 1975.

ton, 364 F. 2d 197 at 203 (*en banc*) (4th Cir. 1966), the court recognized the "strong obligation on the court to make sure that similar conduct [unconstitutional police activity] will not recur." This judicial obligation is similarly present here where the plaintiffs have fully established the defendants' unconstitutional behavior and the limitations inherent in the existing complaint procedure. 357 F. Supp. at 1318, 1321. An injunction ordering implementation of an effective procedure for dealing with civilian complaints alleging police misconduct is a requisite step in the District Court's obligation to prevent future unconstitutional police behavior.

Allowing an anachronistic grievance machinery to exist is worthless and dangerous for it compels the frustrated community to reject it and embrace more lethal instruments of protest against the police. As the Fourth Circuit Court of Appeals recognized in *Lankford*:

> "The police department is society's instrumentality to maintain law and order, and to be fully effective it must have public confidence and cooperation. Confidence can exist only if it is generally recognized that the department uses its enforcement procedures with integrity and zeal, *according to law and without resort to oppressive measures. Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds disrespect for the*

> *law, the difficulties of law enforcement are multiplied.*" (Emphasis added.) 364 F. 2d at 204.[16]

An improved civilian complaint procedure will facilitate police enforcement of the laws by making individual police officers accountable for any illegal behavior, thereby increasing respect for the police. Public disrespect for the police is a conceded factor related to the propensity of violent outbursts in black communities.[17]

At a time when Philadelphia and all other major urban areas demand law and order through increased police protection, public respect for the police, with its resultant beneficial effect on the efforts of police departments, cannot be overemphasized. Without this respect, efforts to insure law and order in Philadelphia will be inhibited by mistrust, suspicion and fear

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[16] *See also, Lewis v. Kugler*, 446 F. 2d 1343 at 1352 (3rd Cir. 1971), quoting Mr. Justice Brandeis, dissenting in *Olmstead v. United States*, 277 U.S. 438, 485 (1928): "In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites everyman to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means . . . to declare that the government may commit crimes in order to secure the conviction of a private criminal . . . would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face."

[17] *See Lankford*, 364 F. 2d at 204, and Report of the National Advisory Commission on Civil Disorders, at 93 (Government Printing Office No. 1968-0-291-729, March 1, 1968).

on the part of the people the police are sworn to protect. The road to community peace and tranquility can be opened by the adoption of a legal, compassionate complaint procedure wherein citizens and police alike are treated fairly and equally. The present "procedure" has only served to reinforce mutual distrust and has aggravated the antagonism already existing between police and citizens.

Relationships between the police and the community are rubbed raw by ineffective complaint procedures that cause frustration and community tension and which too often escalate into a confrontation. Without improvement of this complaint procedure, relations between police and community will suffer from a lack of cooperation and confidence. The civilian complaint procedures, as outlined by Judge Fullam, afford the Philadelphia Police Department an opportunity to discover deficiencies as well as to establish an important channel of communication between the police and the people they serve.

CONCLUSION

All evidence indicates that police misconduct by officers of the Philadelphia Police Department continues to be a steadily increasing problem. Existing remedies to redress citizen grievances, including the filing of complaints with the Police Department and the District Attorney's office or the filing of private civil damage suits are ineffective.

The procedures delineated by the District Court are absolutely essential to begin the process of enabling citizens of Philadelphia to redress their grievances. The Commonwealth of Pennsylvania endorses the form of remedy adopted by the District Court and, therefore, respectfully requests this Court to affirm the District Court's relief.

Respectfully submitted,

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